Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Petition for Emergency	)	WC Docket No. 02-202
Declaratory and Other Relief	)	
	)	

OPPOSITION

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Dated: August 15, 2002

SUMMARY

Verizon's Petition does nothing more than seek to create conflict between the Commission and the United States bankruptcy courts and divert the Commission's attention and resources from the more crucial issues facing the telecommunications industry today. Essentially, Verizon – unhappy with its treatment under the Bankruptcy Code – seeks to have the Commission become its advocate in the bankruptcy courts. Verizon invents guidelines that blatantly encroach on the jurisdiction of the federal bankruptcy courts causing discord between the Communications Act and the Bankruptcy Code. Adding insult, Verizon ignores such jurisdictional hurdles claiming that Verizon needs all tools necessary to protect itself from the financial crisis. Verizon fails to understand that such tools would likely be unenforceable before a federal bankruptcy court.

In addition, certain aspects of the guidelines requested by Verizon represent the same song and dance already performed before the Commission. Verizon is knowingly wasting Commission time and resources. Verizon already has a proper forum and proceeding for each and every issue raised in its Petition.

Verizon fails to demonstrate how its proposed guidelines would achieve the stated objectives of limiting the financial fallout in the industry and preserving service to customers. To the contrary, Verizon's guidelines represent nothing more than an attempt by Verizon to override the discretion bestowed by Congress on federal bankruptcy courts to give Verizon greater rights over competitive carriers. Verizon's Petition should be denied.

TABLE OF CONTENTS

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	)	
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OPPOSITION

CTC Communications Corp., DSL.net Communications, LLC, Focal Communications Corp., Level 3 Communications, LLC, Pac-West Telecomm, Inc., and US LEC Corp. ("Commenters") hereby oppose the above-captioned Petition for Emergency Declaratory and Other Relief filed by Verizon on July 24, 2002 ("Petition"). The issues in Verizon's Petition are already before the Commission in other proceedings or are clearly beyond the authority and expertise of the Commission. Verizon's Petition appears to be an attempt to thrust the Commission into direct conflict with the federal bankruptcy courts. At a time when the Commission faces issues critical to the development of competition in local markets, Verizon seeks to divert the Commission's time and resources to address issues already being dealt with in other Commission proceedings and in the bankruptcy courts in an apparent effort to have the Commission establish guidelines that conflict directly with federal bankruptcy law.

To deflect attention from it's own culpability, Verizon has the audacity to blame the current financial condition in the industry on the FCC's effort to implement the provisions of the 1996 Act. Verizon further distorts the facts and legal issues surrounding the telecommunications bankruptcies in order to exaggerate their impact on Verizon and to win extraordinary rights over its competitors' finances. These rights would be derived from Commission approved guidelines ("Guidelines")[1] under which the Commission would:

- permit carriers expeditiously to revise their tariffs to require advance payments, security deposits, and shorter notice periods *where necessary to ensure adequate assurance* of payment by their customers (emphasis added);

- inform bankruptcy courts that carriers should receive payment in advance or other similar protections to obtain *adequate assurance of payment* for services provided during the pendency of their customers' bankruptcy proceedings (emphasis added);

- confirm that carriers wishing to receive the benefits of existing service arrangements of bankrupt carriers must, consistent with bankruptcy law (and binding federal tariffs), *pay a cure of prior indebtedness* on those services (emphasis added); and

- direct competitive local exchange carriers ("CLECs") to provide the information needed successfully to coordinate carrier-to-carrier transfers.

Petition at 3.

Verizon completely ignores the jurisdictional barriers presented by these Guidelines, which conflict directly with the United States Bankruptcy Code (the "Bankruptcy Code" or the "Code"). The conflict arises from Verizon's effort to override the discretion bestowed by Congress on federal bankruptcy courts and to give telecommunications utilities greater rights over other non-telecommunications utilities. Verizon fails to demonstrate how the Commission's declaration to a bankruptcy court that Verizon is entitled to receipt of payments will resolve its issues. Such efforts by the Commission would carry little, if any, weight since

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1 Verizon suggests that the ultimate resolution will be to "restor[e] prices to levels that reflect the true risk carrier's face in the market" and "allow recovery of the extraordinary costs imposed on them as a result of serving carriers with financial difficulties." Petition at 3. Since this issue is merely a comment by Verizon and not a specific request, Petitioners will not address this issue at length, except to note that Verizon's suggestion that raising rates will resolve the telecommunications crisis is self-serving and without merit. In truth, it is Verizon's inflated pricing, erroneous billing practices and implacable opposition to competition that contributed to this crisis. Having contributed to the failures of a number of its competitors, Verizon now seeks

the issue is directly related to the equitable distribution of the estate's assets, which is at the core of the bankruptcy court's responsibilities. By contrast, nothing in the Communications Act suggests that the Commission has any responsibility to get involved in the distribution of a debtor-carrier's estate.

Verizon fails to explain how the Guidelines will achieve the stated objectives of healing the telecommunications industry and avoiding discontinuance of service to customers. Due to the lack of legal and factual support and the jurisdictional conflicts created, the Petition should be denied.

I. The Guidelines Fail to Achieve the Stated Objectives

Verizon's premise for relief is "preventing the financial plight of some carriers from undermining the stability of the industry as a whole." Petition at 3. Although Verizon alleges harm to the industry, Verizon never points to specific examples of harm. Petition at 2-3. It is obvious that less money is being invested in the industry because the capital markets have shut down and large debts are not being paid, but the telecommunications industry is not alone. Verizon fails to explain how its proposed Guidelines will resolve the financial woes of the industry. At bottom the Guidelines are simply an effort by Verizon to improve Verizon's right to payment for pre-petition and post-petition services provided to carriers. The Code already provides appropriate treatment for utilities such as Verizon. What Verizon seeks relief from in its Guidelines is the decisions of various bankruptcy judges who disagree with Verizon's view of adequate assurance. Verizon's attempt to increase its entitlement to a debtor's cash is

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regulatory relief from the logical consequences of its actions and insurance against future failures.

fundamentally flawed because its rights are already set forth in the Code and cannot be enlarged without Congressional action.

Verizon also expresses what appears to be, from Verizon's perspective, a secondary concern - to ensure the continuation of service to customers. Verizon claims that limiting the "financial fallout" will ensure the continuity of service. Verizon again fails to explain how its Guidelines will limit financial fallout and thereby prevent disconnection of service. Moreover, Verizon's actions over the past year render their expressed concern disingenuous. Verizon claims that it is "sensitive to and in agreement with the Commission's overall policy goal of ensuring continuity of service to residential, business, and governmental consumers alike." Petition at 3. However, Verizon has refused to enter into arrangements with competitive carriers to serve as a "default carrier"[2] for customers at risk of being disconnected. Following receipt of a notice that the competitive carrier is withdrawing from the telecommunications market, certain customers fail to respond and choose a new service provider. Such customers are at risk of being disconnected. Even where a competitive carrier offered to transfer such customers at no cost to Verizon to prevent disconnection, Verizon refused.

Verizon's proposed Guidelines do not in any manner achieve the stated objectives of reducing financial fallout and preventing disconnection of service. Rather, the sole objective of the Guidelines is to enable Verizon to circumvent the bankruptcy laws even at the expense of creating direct conflict between the Commission and the bankruptcy courts. The Guidelines themselves illustrate the inappropriateness of action by this Commission, since they clearly use terms of art not found in the Communications Act. These terms are directly from the lexicon of bankruptcy law and the subject matter addressed is squarely vested within the jurisdiction of the federal bankruptcy courts. Verizon fails to address how or why the Commission would (i) seek to interpret bankruptcy law and (ii) concern itself with the equitable distribution of the carrier-debtor's estate, both actions that clearly fall within the purview of the federal bankruptcy courts.

II. Verizon Fails to Disclose the Unique Status of Utilities under the Bankruptcy Code

The United States Constitution delegates to Congress the exclusive power to enact bankruptcy law. Accordingly, a comprehensive federal bankruptcy statute has been in effect since 1898.[3] The Bankruptcy Code is designed to achieve two objectives: (i) to ensure fair and orderly distribution of the debtor's assets (the "estate") for the benefit of creditors; and (ii) to provide the debtor with the ability to start over financially, *i.e.*, to obtain a "fresh start." The debtor's estate is administered by the federal bankruptcy courts. Either the proceeds of the estate (in a liquidation) or a portion of the estate (in a reorganization) are distributed to creditors by the federal bankruptcy court in accordance with the respective rights and priorities pursuant to the Bankruptcy Code. In either event, the Code sets out and the bankruptcy courts must decide a fragile balance of rights among secured creditors, priority creditors, general unsecured creditors and the debtor.

Based on the financial fallout in the industry, Verizon seeks from the Commission permission "to take the same types of flexible and expeditious measures that firms in other industries may take when faced with similar economic turmoil and uncertainty." Petition at 2.

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[2] Some state statutes require the incumbent local exchange carriers to act as a "carrier of last resort," which requires the carrier to provide service to all residential and business customers upon request in a designed geographic area.

[3] The current federal bankruptcy statute is the Bankruptcy Reform Act of 1978, as amended, which is commonly referred to as the Bankruptcy Code. The Bankruptcy Code

Verizon provides no examples of the "types of flexible and expeditious measures" nor identifies the firms that use these measures. Verizon further fails to explain the impact these broad measures would have on Verizon's rights and obligations as a utility under the Bankruptcy Code.

Painting a picture of hardship as a utility, Verizon argues that it needs the same rights as other firms dealing with bankrupt carriers. *Id.* Verizon fails to disclose to the Commission that, as a utility under the Bankruptcy Code, it has more rights to payment for services than other entities in contractual relationships with the debtor. In many respects, Verizon *benefits* from the unique protections provided to utilities under the Bankruptcy Code, such as the assurance of payment for services. Other third party unsecured creditors are not given a statutory assurance. As discussed below, the determination of what constitutes adequate assurance is complex and squarely within the jurisdiction and expertise of the Bankruptcy Court. It must be determined based on the complexities of each case. Thus, Verizon's request of the Commission for an expansion of its rights against carriers in bankruptcy is contrary to established bankruptcy law and, as such, likely unenforceable. More importantly, it seeks to thrust the Commission into the exclusive province of the bankruptcy courts.

A. Treatment of Utilities under the Federal Bankruptcy Code

Utilities are treated differently under the Bankruptcy Code than other third party suppliers.[4] Section 366 of the Bankruptcy Code sets forth the rights of utility companies providing services to a debtor when the debtor files its petition. The Code recognizes the

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contains eight Arabic-numbered chapters. Chapters 7, 9, 11, 12 and 13 are referred to as "relief" chapters.

[4] The Bankruptcy Code does not define the term "utility." It is clear, however, that the term governs regulated public utilities providing electric, gas, telephone and water service to the debtor. *See In re M. Miller Ltd.*, 13 B.R. 5 (Bankr. M.D. Pa. 1980) (local telephone provider

importance of public utilities that provide essential services such as electricity, water, telephone and gas. Thus, utilities are initially required to continue to provide service to the debtor after a bankruptcy case has been commenced.

Without Section 366, if a utility did not have an executory contract with a debtor, it could simply decline to do business with the debtor, thereby depriving it of an essential service. Accordingly, Section 366(a) provides that a utility may not alter, refuse, or discontinue service to the debtor solely on the basis of the commencement of the bankruptcy case or because a debt is owed to the utility for pre-petition service. Thus, to the extent any Verizon Guideline alters the relationship between Verizon and the debtor-carrier between the time a petition is filed with the Bankruptcy Court and 20 days thereafter, it violates Section 366 of the Code and is without effect.

Once a carrier files for bankruptcy protection, the bankruptcy court has jurisdiction over the debtor-carrier's estate and the distribution of funds from the estate. Therefore, the bankruptcy court determines and approves the adequate assurance to which a utility, such as Verizon, is entitled for post-petition services.

B. Verizon Misrepresents the Adequate Assurance Determined by Judges

The Bankruptcy Code directly protects utilities by requiring that utilities, such as Verizon, receive payment for post-petition services ("adequate assurance"). Adequate assurance is determined by the Bankruptcy Court Judge on a case-by-case basis taking into consideration

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considered a utility); *In re Sun-Tel Communications, Inc.*, 39 B.R. 10, 11 (Bankr. S.D. Fla. 1984) (same); *In re Gehrke*, 57 B.R. 97, 98 (D. Ore. 1985).

several factors including the resources of the estate and the interests of all parties.[5] As pointed out by Verizon, the Bankruptcy Court has broad discretion in determining adequate assurance.

Section 366(b) also provides that the utility may alter, refuse, or discontinue service if the debtor, within 20 days of the order for relief (*i.e.*, the petition date under the Bankruptcy Code), fails to provide the utility with adequate assurance of payment in the form of a deposit or other security for services. Verizon complains, however, that efforts to terminate service have been frustrated by the regulatory commissions. Petition at 7. Verizon claims that some bankruptcy courts have determined that the utility's right to terminate service constitutes adequate assurance. Verizon fails, however, to cite one case where its only assurance of payment was the right to terminate service. To the contrary, in bankruptcy cases involving telecommunications carriers, adequate assurance has been commonly provided through payment of a deposit for a matter of weeks or accelerated or advance payments (*see* attached schedule of examples). Moreover, in establishing adequate assurances, bankruptcy courts have taken into consideration the number of days a utility may be obligated to provide service without pay in order to provide debtor-carriers an opportunity to provide customers with proper disconnect notice under federal and state regulatory laws.

In the bankruptcy case of Network Plus,[6] the bankruptcy court approved an adequate assurance order ("Order") that required advance payment for services (in addition to other payment) and provided, in part, that the failure of the debtor-carrier to make payment to any

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5 *Adelphia Business Solutions, Inc., et al.*, Ch. 11 Case No. 02-11389, slip. Op. at 36 (Bankr. S.D.N.Y., June 25, 2002).

6 *Network Plus Corp. and Network Plus, Inc., Debtors.*, Chapter 11 Case No. 02-10341 (PJW) (Bankr. Del.).

utility listed in the Order enabled such utility to disconnect service upon 24-hours notice or 30 days notice if local service was being provided by the utility.

Verizon's claim that federal and state regulators prevent discontinuance of service when adequate assurance is not met is flatly not true. Again, in the Network Plus bankruptcy case, BellSouth did not receive advance payment in accordance with the adequate assurance Order.[7] On April 6, 2002, BellSouth notified Network Plus that, pursuant to the adequate assurance Order, it would disconnect services to Network Plus business customers on May 10, 2002. Network Plus services were subsequently disconnected by BellSouth and the federal and state regulators did not "nullify" this action. If Verizon, like BellSouth, had not received payment in accordance with the adequate assurance Order, Verizon too would have been able to terminate service to Network Plus. Thus, contrary to Verizon's claims, utilities are left with a viable means to assure payment or to limit losses post-petition.[8]

It appears that Verizon has been unhappy with a few decisions of the federal bankruptcy courts. While Verizon may have sat on its rights in previous proceedings, it exercised its right in the Network Plus proceeding demonstrating that it can obtain adequate assurance of payment and the right to terminate service for non-payment post-petition. Moreover, Verizon was one of over ninety other carriers that recently filed an opposition in the WorldCom bankruptcy, in which it

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[7] *See Order Authorizing (i) Sale of Certain of the Debtors' Assets Free and Clear of Liens, Claims Encumbrances, and Other Interests, (ii) Authorizing the Assumption and Assignment of Executory Contracts and Leases, (iii) Authorizing the Debtors to Enter into and Approving Management Agreement, (iv) Approving Regulatory Transition Process, (v) Determining that such Sale is Exempt from Stamp, Transfer, Recording or Similar Taxes and (vi) Granting Related Relief*, Case no. 02-10341 (PJW) (March 20, 2002) (Bankr. D. Del.).

[8] It is noteworthy that a utility has the right to seek a bankruptcy court order to terminate service to a debtor for non-payment. Verizon fails to address why this is not an available alternative.

argued its rights to adequate assurance.[9] Verizon's bold position in its Petition seeking extensive rights against other carriers was softened substantially in its Motion before the United States Bankruptcy Court Southern District of New York. Here, Verizon did not argue for a deposit, but simply requested advance payments, among other things. Verizon's Motion is an excellent demonstration of the complexities dealt with by the federal bankruptcy courts when determining adequate assurance. Verizon's actions also demonstrate that it knows the appropriate forum for these issues. Accordingly, the Commission should not be wasting limited resources on this Petition.

III. Bankruptcy Law Governs the Payment of Pre-Petition Debt

Verizon requests that the Commission require purchasing carriers to cure pre-petition obligations when purchasing assets from the estate of a debtor-carrier. As Verizon is aware, a creditor's claim for payment belongs before the Bankruptcy Court, not the Commission. Thus far, no bankruptcy court has required a cure where the debtor rejects the contract. The designation of a contract as an executory contract and the determination of any request to reject belong exclusively before the Bankruptcy Court.

In its Petition, Verizon asserts that "nothing in the Communications Act denies carriers serving bankrupt customers of carrier's well-established rights under the Bankruptcy Code (and binding federal tariffs) to obtain a cure of prior indebtedness from carriers that receive the benefits of the bankrupt's existing service contracts." Petition at 8. Verizon's assertion twists the relationship between the Communications Act and the Bankruptcy Code to produce an erroneous

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[9] *See Objection of Verizon Communications Inc. to the Debtors' Motion Pursuant to Sections 105(a) and 366(b) of the Bankruptcy Code for Authorization to Provide Adequate Assurance to Utility Companies,* Chapter 11 Case No. 02-13533 (AJG) (Aug. 12, 2002) (Bankr. S.D. NY).

result. Although "nothing in the Communications Act *denies*" Verizon from collecting pre-petition debt; nothing in the Communications Act *grants* Verizon a right to collect pre-petition debt of a bankrupt carrier. The Communications Act is silent with regard to payments to utilities by debtors under the protection of the Bankruptcy Code. The Bankruptcy Code, on the other hand, explicitly *denies* Verizon a right to payment of pre-petition debt when a debtor rejects its contract with Verizon.[10] The Commission should not accept Verizon's invitation to create law under the Communications Act that directly conflicts with the Bankruptcy Code.

Verizon also seeks Commission Guidelines that address the obligation of a purchaser to pay pre-petition debt since the purchaser "receive[s] the benefit of . . . the bankrupt carrier's existing service arrangements . . . ." Petition at 8. Verizon's position is meaningless in the context of the telecommunications industry. The "benefits" of a service contract are available to all requesting carriers. In other words, by law, all carriers have a right to use Verizon's telephone network to provide service. Moreover, Verizon has a common carrier obligation to make each and every one of its contracts available to other carriers willing to agree to the same terms. Thus, the "benefits" a debtor-carrier may receive from a contract with Verizon are not unique. For example, carrier-A purchasing a UNE loop from Verizon benefits while that carrier provides service. However, when the customer chooses to switch to carrier-B, Verizon does not remove the facilities (the benefits) provided to carrier-A under its contract and reinstall new facilities (the benefits) for carrier-B under its contract. Quite the opposite, carrier-A's rights to the loop are terminated and carrier-B's rights are originated. The UNE-loop (the benefits received from Verizon) are not unique to any carrier contract. Thus, a purchaser of assets does

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10 Without express court approval to assume and assign a contract, there is no assumption and assignment and there is no obligation to pay cure. 11 U.S.C. §365.

not receive any benefit from the debtor-carrier's contract and need never assume such a contract to receive service from Verizon.

In its Petition, Verizon mischaracterizes what occurs when a company purchases the customers and other assets from an estate. Verizon claims this to be an assumption of the debtor's existing service arrangements. The attempt by Verizon to argue that a sale of assets is a *de facto* assumption and assignment is without merit. Verizon is aware that such "de facto" arguments have previously been rejected by the Bankruptcy Court. In the Net2000 case,[11] the Bankruptcy Court ruled that the purchaser of some of Net2000's assets had not assumed the Net2000/Verizon agreements and, therefore, was not liable for Net2000's pre-petition liability.[12] Even if Verizon wishes to reassert its fruitless arguments, they belong before the Bankruptcy Court, not the Commission. Verizon cannot ignore, and has no legal basis before this Commission to challenge, a debtor-carrier's decision to *reject* a Verizon agreement. Verizon inappropriately seeks a ruling from the Commission that, notwithstanding a debtor-carrier's unequivocal rejection of a contract, the debtor-carrier has somehow assumed and assigned agreement and must pay a cure. The Commission should refrain, not only from interpreting the Bankruptcy Code, but in this instance, from making new bankruptcy law.

Verizon admits that a carrier-debtor can reject a contract with Verizon and a purchaser may order service. Petition at 9. However, Verizon notes that such arrangement may result in disconnection of service to the end users being acquired from the carrier-debtor. *Id.* Commenters

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[11] *Net2000 Communications, Inc., et al., Debtors*, Chapter 11 Case No. 01-11324 (MFW) (Bankr. D. Del.).

[12] *Order regarding the Emergency Motion of the Operating Subsidiaries of Verizon Communications Inc. to Require Debtors and Cavalier Telephone Company to Cure Defaults under the Debtors' Contracts with Verizon and for Contempt*, Chapter 11 Case No. 01-11324 (MFW) (Bankr. D. Del.).

will not reiterate the overwhelming evidence that demonstrates the illegality of Verizon's position. Such evidence has been presented fully before the Commission in two proceedings.[13] Commenters note that in a related context, the Supreme Court has directed incumbents not to "impose wasteful costs" on carriers.[14] Disconnecting a customers facilities only to reconnect them is not only wasteful, but an arrogant abuse of Verizon's bottleneck control over its monopoly network.[15]

What Verizon seeks through this Guideline is to diminish the value of carrier-debtor estates by requiring payment of pre-petition debt to Verizon for rejected contracts. Thus, the other creditors in the estate would get less or the assets would not attract a buyer. More importantly, this directly contradicts Section 365 of the Bankruptcy Code.

IV. The FCC Need Not Consider the Tariff Issue in this Proceeding

Verizon argues that the Commission should allow carriers to revise tariffs to ensure against nonpayment, Petition at 4, as it concurrently sought to do to Tariff F.C.C. Nos. 1, 11, 14, and 16 in Transmittal No. 226. Numerous parties have petitioned the Commission to reject or suspend and investigate the proposed revisions, arguing that they would establish unjust and

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13 *Winstar Communications, LLC Emergency Petition for Declaratory Ruling Regarding ILEC Obligations to Continue Providing Services*, Public Notice, WC Docket No. 02-80 (rel. April 19, 2002)*; Verizon Petition for Declaratory Ruling Regarding CLEC Obligations to Cure Assigned Indebtedness*, Public Notice, WC Docket No. 02-80 (rel. May 3, 2002).

14 *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 395 (1999) (quoting Reply Brief for Federal Petitioners and Brief for Federal Cross – Respondents at 23).

15 As Winstar previously noted "[i]n *Personal Computer Network, Inc*., Illinois Bell had threatened to terminate the use of specific telephone numbers by a third party purchaser of the assets of the debtors unless the buyer paid it the pre-sale amounts due from the debtors. The bankruptcy court ruled that Illinois Bell could not force the purchasing plaintiffs to pay the debtor's pre-petition debt or else have service terminated . . . 'Bell's attempt to hold the transfer of these numbers hostage while looking to its tariff for authority for payment of pre-petition debt is unfounded in law and inequitable in result'." 85 B.R. 507 (Bankr. N.D. Ill.), *appeal den'd*., 89 B.R. 19 (N.D. Ill. 1988).

unreasonable standards for deposits, advance payments, and notice, and clearly demonstrate that Verizon's proposed tariff is unlawful.[16] Most telling is that the Commission has already responded and set for investigation similar tariff revisions sought by BellSouth and Iowa Telecomm.[17]

Despite its filing of proposed tariff revisions, Verizon nonetheless specifically requests in its Petition that the Commission establish a Guideline that would "permit carriers expeditiously to revise their tariffs to require advance payments, security deposits, and shorter notice periods *where necessary to ensure adequate assurance* of payment by their customers." Petition at 3 (emphasis added). Verizon may already revise its tariffs lawfully on 15 days notice. The remainder of Verizon's request is vague and would only serve to empower Verizon to implement the kinds of unlawful terms and conditions recently proposed in its Transmittal 226.

Moreover, Verizon's reference in this Guideline to "adequate assurance of payment" causes further concern as to the implications for bankrupt companies. As emphasized throughout this Opposition, the federal bankruptcy courts are bestowed with the legal responsibility for determining adequate assurance, and the Bankruptcy Code defines Verizon's ability to obtain advance payments and security deposits. In short, Verizon may not use its tariffs, and the Commission should not condone the use of tariffs, to "ensure adequate assurance of payment."

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16 *See Petition of Association of Communications Enterprises, Freedom Ring Communications, L.L.C, d/b/a BayRing Communications, Business Telecom, Inc., DSL.net, Inc., ATX Communications, Inc., CTC Communications Corp., Focal Communications Corp., Level 3 Communications, LLC, PaeTec Communications, Inc., Pac-West Telecomm, Inc., US LEC Corp. to Reject or Suspend and Investigate Proposed Tariff Revisions*, Verizon Telephone Companies Tariff F.C.C. Nos. 1, 11, 14 and 16, Transmittal No. 226 (filed Aug. 1, 2002). Commenters respectfully request that the Petition be incorporated herein by reference.

17 BellSouth Telecommunications, Inc. Transmittal No. 657, *Order*, DA 02-1886 (rel. Aug. 2, 2002; Iowa Telecomm. Svs., Inc. Transmittal No. 22, *Order*, DA 01-1732 (rel. Jul. 17, 2002).

Such tariffs would unlawfully usurp the discretion of the federal bankruptcy courts and would therefore be void and unenforceable.

V. The Commission Should Make Clear that CLECs Need Only Provide Information Necessary to Ensure Proper Handling of Customers

Verizon requests that the Commission "direct CLECs to provide the information needed successfully to coordinate carrier-to-carrier transfers." Petition at 10. CLECs are anxious to provide the necessary information to Verizon to ensure that customers are handled properly and welcome communications from Verizon to improve the process. However, Verizon fails to state instances in which CLECs have intentionally withheld necessary information. Moreover, Verizon's request is too vague to truly improve the carrier-to-carrier exchange of information. As Verizon is aware, it took years of collaborative meetings to establish carrier-to-carrier migration guidelines in New York.[18] Yet Verizon provides no detail of the information missing and, instead, produces a request for sweeping, unconditional authority to demand information from CLECs.

A blanket directive from the Commission to CLECs to provide information unilaterally deemed by Verizon to be necessary would enable Verizon to impose onerous burdens on CLECs and to enable Verizon to refuse to execute orders, thereby, holding customers hostage until Verizon's demands for payment are met. Moreover, Verizon must not be permitted to burden a debtor's estate with exhaustive requests for information that may not be necessary to execute an order.

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18 *Proceeding on Motion of the Commission to Examine the Migration of Customers Between Local Carriers*, Order Instituting Proceeding, Case 00-C-0188 (issued Jan. 12, 2000).

VI. Conclusion

As Verizon points out, "it is settled law that the Commission must harmonize its policies under the Communications Act with the Bankruptcy Code."[19] The relief requested by Verizon creates discord between what would be Commission mandates and approved tariffs and the Bankruptcy Code. More specifically, Verizon's Guidelines seek to usurp the jurisdiction of the federal bankruptcy courts. Essentially, Verizon –unhappy with its treatment under the Bankruptcy Code – seeks to have the Commission become its advocate in the bankruptcy courts. This clearly is not an appropriate role for the Commission. Thus, Verizon's Petition must be denied.

Respectfully submitted,

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Dated August 15, 2002

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19 Petition at 9, citing LaRose v. FCC, 494 F.2d 1145 (D.C. Cir. 1974).

EXHIBIT 1

ADEQUATE ASSURANCES IN RECENT BANKRUPTCY CASES

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ADEQUATE ASSURANCES IN RECENT BANKRUPTCY CASES

Case	Adequate Assurance	Docket Entry
Global Crossing 02-40187 S.D.N.Y.	Grant of administrative expense status.*	#716 3/25/02
OnSite 01-12879 S.D.N.Y.	Semi-monthly payments in advance, with true-up every two months.	# 81 6/22/01
AxisTel 01-10005 D. De.	Grant of administrative expense status	#148 10/16/01
Winstar 01-01430 D. De	SBC: Payment of post-petition arrears. Two week's deposit, plus two weeks payment in advance, with monthly true-ups and adjustments.	#230 5/17/01
	Sprint: Weekly payment in advance, with monthly true-ups.	# 167 5/8/01
	MCI: One week's deposit, with monthly payments in advance for UNEs, two weeks payment in advance for other services. True-ups and adjustments two weeks after the fact.	# 168 5/8/01
	Qwest: Portion of post-petition arrears to date plus 2-weeks in advance; 2-weeks in advance from then on, plus progress payments on post-petition arrears.	# 1093 9/28/01
	AT&T: Two weeks payment in advance, with monthly true-ups and adjustments.	# 1449 11/30/01

* Administrative expenses are those that benefit the debtor or the debtor's business after commencement of the case. ("Post-petition"). The most significant administrative expenses are those incurred in preserving the estate after bankruptcy has begun. These include wages, rent, and *utilities.* Administrative expenses enjoy the first priority in the payment of claims, generally ahead of all other creditors.